

VZCZCXRO3767

PP RUEHAG RUEHAST RUEHDA RUEHDF RUEHFL RUEHIK RUEHKW RUEHLA RUEHLN
RUEHLZ RUEHNP RUEHPOD RUEHROV RUEHSK RUEHSR RUEHVK RUEHYG
DE RUEHSF #0037/01 0231550
ZNR UUUUU ZZH
P 231550Z JAN 09
FM AMEMBASSY SOFIA
TO RUEHC/SECSTATE WASHDC PRIORITY 5724
INFO RUEHZL/EUROPEAN POLITICAL COLLECTIVE
RUCPDO/USDOC WASHDC

UNCLAS SECTION 01 OF 02 SOFIA 000037

STATE FOR USTR JCHOE-GROVES, FOR EB/IPE URBAN and MCGOWAN; JBOGER
AND EUR/CE
COMMERCE FOR SSAVICH
DOJ FOR CALEXANDRE

SENSITIVE
SIPDIS

E.O. 12958: N/A

TAGS: [ECON](#) [KIPR](#) [ETRD](#) [BU](#)

SUBJECT: BULGARIA: IPR EFFORTS LOSE STEAM

Ref: 08 Sofia 0522

¶1. (SBU) SUMMARY: The Deputy Chief of Mission informed the relevant deputy ministers of Culture, Economy and Foreign Affairs January 22 that, despite modest progress in some areas, Bulgarian IPR efforts were not hitting the mark. In order to improve performance, Bulgaria has to take urgent action in two areas: cooperation with industry and internet piracy-related prosecutions and legislation. End Summary.

COOPERATION WITH INDUSTRY

¶2. (SBU) In 2006 Bulgaria created a model intergovernmental IPR Council which, in close cooperation and full partnership with industry, spearheaded Bulgaria's efforts on IPR. Partly as a result of the tremendous accomplishments of this Council, Bulgaria was not placed on the Special 301 Watch List in 2007 and 2008. In spring 2008, a new Deputy Minister of Culture restricted Council membership to representatives of government entities and allowed industry participation only on a case-by-case basis (reftel). Instead of participating during Council meetings, industry representatives now meet separately with the Deputy Minister, who then, in theory, raises industry concerns at Council meetings.

¶3. (SBU) Industry representatives, led by the Bulgarian Association of Music Producers and the Business Software Alliance, say they have effectively lost their voice on governmental IPR matters. At the same time, the Council has lost focus and dynamism. Key ministries, including Economy, Finance and Justice now send lower level officials who do not actively take part and often do not bother to show up. Embassy representatives have raised the issue on numerous occasions with the responsible Deputy Minister of Culture, as well as with the Minister of Culture, but it has not been resolved.

LACK OF PROGRESS ON PROSECUTING INTERNET PIRACY CASES

¶4. (SBU) In the last two or so years, the Cyber Crime Unit of the Ministry of Interior has conducted a number of successful raids on pirate internet sites, including in December 2006, March 2007, and June 2008. This unit has also been able to shut down a number of pirate sites, in some cases for good. In addition, in November 2008, the Bulgarian National Investigative Service conducted a training conference for investigating magistrates and other enforcement officials from around the country on a variety of topics. DOJ participated in the conference, providing guidance on -- among other things -- investigating and prosecuting the most heavily used internet pirate sites, known as BitTorrent trackers.

¶5. (SBU) Unfortunately, despite successful investigative efforts taken against the largest pirate sites in Bulgaria, only one case has been presented to court. This case is particularly significant

because it involves arenabg.com, the second biggest pirate site in Bulgaria and one of the most popular websites in the country. Moreover, the arenabg.com prosecution is possibly the first BitTorrent criminal court case in Eastern Europe. Unfortunately, the judge assigned to the case has now returned it twice to prosecutors because of problems with the indictment. In addition, at least two more cases involving BitTorrent trackers -- including one against zamunda.net, the largest pirate site in Bulgaria -- are still in the investigative stage. It is unclear when prosecutors will present them to court. Worse, even though arenabg.com and zamunda.net were shut down temporarily after raids, they are back in business. They are both among the 15 most popular sites in Bulgaria.

16. (SBU) Representatives of the relevant ministries on the IPR Council rightly argue that they do not control Bulgaria's independent but inefficient court system. But a dynamic IPR Council, working with industry, could develop ways to improve the handling of internet piracy cases, support an already-functioning informal task force to exchange best practices on internet piracy cases, and encourage more participation and input from enforcement authorities. Despite our urging, these efforts have not taken place.

DEBILITATING COURT DECISION ON ACCESS TO DATA

17. (SBU) DCM expressed concern to the Deputy Ministers of Culture, Foreign Affairs and Economy over the November 11 Supreme Administrative Court's decision to strike down an article in "Ordinance 40" to the Act on Electronic Communication, legislation passed to harmonize Bulgarian legislation with relevant EU directives. This article guaranteed the right of the competent

SOFIA 00000037 002 OF 002

directorate at the Ministry of Interior to access data stored by Internet Service Providers on behalf of their customers -- an essential tool for obtaining evidence in internet piracy cases, not to mention other types of crime involving computers. The Court struck down the data access article as a violation of constitutional rights to information privacy.

18. (SBU) Until the problem identified by the Supreme Administrative Court is fixed, the Court's decision could deal a crippling blow to the ability of the police to investigate internet piracy and other computer crimes. While the Intergovernmental IPR Council does not have control over the court decision, it could still play a constructive role here. For example, the Council could provide input to develop a legally sound version of the data access article, one that gives law enforcement legitimate access to criminal evidence but still protects privacy rights. Moreover, a dynamic IPR Council could also support efforts by industry to encourage ISPs to take responsibility for the content on their sites.

19. (SBU) Comment: Bulgaria's judicial system is infamous for inefficiency and lack of transparency. There are no quick fixes. But reinvigoration of the government's once-model IPR Council is critical. The Deputy Minister in charge of the Council won't budge from a very legalistic and procedurally-narrow stand. The IPR Council has both symbolic and substantive importance. It alone, though, can't compensate for the judicial logjam. But it can demonstrate greater activism and determination on the top priorities. As a result, despite a successful recent track record of IPR-related inspections, raids and seizures, Bulgaria's IPR regime and reputation have taken a hit.

MCELDOWNEY